

Sorting Out the Specifics of Copy Fee Legislation

Many of the provisions of the Minnesota Government Data Practices Act (Chapter 13) governing access to public government data are set out in section 13.03. Subdivision 3 of this section permits government entities to charge a fee for providing copies of public government data. The 2005 Legislature amended subdivision 3 and changed the way copy fees may be calculated. (Minnesota Session Laws 2005, Chapter 163, section 8, effective August 1, 2005.)

This article summarizes the 2005 amendments and addresses some of the issues that have come to IPAD's attention in fielding questions about them. For more specific guidance about establishing appropriate copy fees, see the document, *Fees for Providing Copies of Public Government Data*, at www.ipad.state.mn.us/docs/copyfees_1303.doc.

Subdivision 3 of section 13.03 requires that any copy fees assessed by a government entity constitute the actual and reasonable costs of providing the copies. The 2005 amendments establish the following **exception** to this rule:

If 100 or fewer pages of black and white, letter or legal size paper copies are requested, and the entity chooses to charge a fee, the fee must be a per-page fee of not more than 25 cents for each page copied (50 cents for a two-sided copy). The entity may charge up to 25 cents per page, regardless of the actual costs of providing the copies. The requestor cannot be required to pay any actual costs – such as mailing costs – that are incurred by the entity for making the copies.

In all other circumstances where a copy fee is calculated pursuant to section 13.03, the entity may require the requester to pay only the actual and reasonable cost of providing the copies.

It is important to note that the provisions of section 13.03 do not apply in instances where a copy fee is established specifically by statute. For example: Pursuant to Minnesota Statutes section 169.09, subdivision 13(f), law enforcement agencies and the Commissioner of Public Safety have authority to charge a specific fee for providing copies of accident reports to commercial users.

Similarly, subdivision 13(e) of section 169.09 authorizes the Commissioner of Public Safety to charge certain persons a \$5 fee for a copy of an accident report. It should be noted that the provisions of subdivision 13(e) apply only to the Commissioner of Public Safety; thus, any fees charged by law enforcement agencies for providing copies of public data contained in accident reports must be calculated pursuant to section 13.03, unless the copies are provided to a commercial user pursuant to subdivision 13(f).

Also of note: When copies are requested by the subject of the data, any fee assessed must be calculated pursuant to section 13.04 rather than section 13.03. The entity may not charge the data subject for searching and retrieving the data, and may charge only the actual costs of making, certifying and compiling the copies.

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Information Policy
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The Omnibus Data Practices session law was summarized in the Summer Edition of *FYi*. What follows is a summary of other regular session laws that contain language related to data practices. Special session laws with data-related provisions, if any, will be summarized in the next edition. The following were effective August 1, 2005, unless otherwise noted.

Chapter 10 is the Revisor's bill and contains several technical provisions related to data practices. All of the changes are in Article 1.

Chapter 23 amends section 144.225 so that a sibling is authorized to receive a certified copy of a death record.

Chapter 98 is a Department of Human Services technical bill making corrections in children and family services language.

In *Article 2*, section 17, an amendment to section 626.557, subd. 12b (b) requires county social service agencies to maintain private data, but does not require them to prepare an investigative memorandum.

Chapter 107 is the higher education budget bill. In *Article 2*, section 16 (adds subd. 8 to section 136A.08), the Higher Education Services Office (HESO) is directed to collect data to monitor the extent to which students who attend Minnesota schools under reciprocity agreements are employed in Minnesota after graduation. Matching of Social Security numbers (SSN) is required and students must consent to this new use of their SSN.

Sections 22, 25 and 27 of *Article 2* direct HESO to collect data to make reports on grants, supplemental and additional loans, and a loan repayment program for certain professions. Some of the data are classified as nonpublic in HESO's hands.

Chapter 125 creates a public corporation, Hennepin Healthcare System, Inc., that operates as a subsidiary of Hennepin County and replaces HCMC. According to *Article 1*, section 17 (new section 383B.917), the corporation is subject to Chapter 13. In addition, there is a new class of data, "competitive data," that is nonpublic or private. Any organization that the corporation forms is not subject to Chapter 13, unless there is a contractual provision that states otherwise.

Section 17 of *Article 1* also provides that the board of directors of the corporation is subject to Chapter 13D and further requires that certain specified meetings be open. Chapter 13D does not apply to organizations formed by the corporation.

Chapter 136 is the omnibus public safety finance bill. It contains a number of data-related provisions. *Article 3* contains changes regarding the registration of sex offenders. In section 8, subdivision 4b, an offender must notify a health care facility of his/her status at the time of admission. The facility is then required to notify other patients or the patient's next of kin/emergency contact. This subdivision applies to persons subject to predatory offender registration on and after August 1, 2005. Section 15 requires law enforcement agencies to notify a health care facility when a registered offender is receiving inpatient care in that facility. This section was effective June 3, 2005.

Section 18 authorizes law enforcement to release information to individuals who the officer believes are likely to be victimized by the offender.

Article 5 contains changes that will allow access to data about sex offenders by the Department of Human Services (DHS). The sections were effective July 1, 2005. Sections 1 and 4 authorize access to the predatory offender registry operated by the Bureau of Criminal Apprehension for corrections purposes and for those of the state-operated services portion of DHS, which operates the treatment centers and the sex offender program.

Section 2 amends section 246.13 to give DHS access to certain medical and criminal history data (the section contains defined terms describing the data) for certain specified purposes. Sharing of data with parties outside of DHS is also authorized, including with community-based treatment facilities.

Section 5 amends section 626.557 to include a requirement that the individual abuse prevention plan for each vulnerable adult include an assessment of the person's risk of abusing other vulnerable adults.

Article 6 makes changes to provisions that authorize background studies at the Department of Human Services. Section 6 deals with data about individuals disqualified from licensure, or for whom a set aside has been granted. (Most disqualifications are based on status as a sex offender.) Data are public or private depending on criteria outlined in new section 245C.22, subdivision 7.

Article 7 includes a provision that the Department of Health maintain a website listing contact information for each local community health services administrator. These administrators are required to have information available about properties in their jurisdiction that were the site of a meth lab. The section is effective January 1, 2006.

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Additionally, an amendment to section 260C.171 requires that a school be told if a child is taken into protective custody because of exposure to meth production.

Section 9 of *Article 8* amends section 299C.095 to state that the release of data about a predatory offender in connection with a background check is not a violation of that section. The new language was effective July 1, 2005.

Article 11, section 4 establishes a new Gang and Drug Oversight Council. One of the council's duties is to "...assist in developing a process to collect and share information to improve the investigation and prosecution of drug offenses." Section 5 establishes the Financial Crimes Oversight Council that has a similar duty with respect to identity theft and financial crime.

Section 17 requires that an electronic recording of any portion of an arrest, booking or testing process made in connection with an arrest must be maintained for a minimum of 30 days after the date the person was booked. This section was effective June 3, 2005.

Article 12 is about DNA collection. New section 299C.105 requires that DNA be collected from all adults and juveniles charged with "violent crimes" (or the juvenile equivalent) and who have had a judicial probable cause hearing on the charges. The Bureau of Criminal Apprehension is required to destroy the DNA specimen and return all records to a person who was found not guilty of a felony. If the charge against a person is later dismissed, the person can request that specimens be destroyed and records returned.

Section 6 amends section 299C.155 to classify DNA analysis data in the Bureau of Criminal Apprehension's centralized system as private and directs that only authorized law enforcement personnel can access the system.

Section 8 creates a new section 290.10 that requires that biological evidence needed to obtain a conviction be kept until the expiration of the sentence or a court order.

Article 13 contains provisions relating to corrections. Section 3 sets forth specific discipline procedures for correctional officers. Subdivision 5 requires an additional notice to officers about the use of a formal statement as evidence of misconduct or the basis for discipline. The section was effective July 1, 2005.

Article 14, section 6 sets fees to be charged by county recorders, including a requirement that the county board set a per page fee for a noncertified copy of document or part of a document.

Section 15 grants public defenders access to data about the criminal convictions of witnesses and access to data about the defender's client. This section was effective July 1, 2005.

Article 17, section 35 makes it a crime to use a false pretense in an email, on a web page or other electronic communication in order to obtain another person's identity. The section applies to crimes committed on and after August 1, 2005.

Chapter 151 is a tax bill.

Article 1, section 5 allows for an agreement between the

Department of Revenue and the Department of Public Safety for specified Revenue employees to access criminal history data. Section 6 allows Revenue to disclose information to the Attorney General or a county attorney for the prosecution of criminal violations of the tax statutes.

Article 9 contains several provisions authorizing the exchange of data about tax preparers between the Department of Revenue and (1) the State Board of Accountancy or (2) the Lawyers Board of Professional Responsibility. Complaint data about individuals are private (section 8).

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Chapter 156 is the state government omnibus finance bill. *Article 2*, section 4 describes a new process that local governments can use to object to a state law or rule. An application is made to the state auditor who has authority to deny some applications based on specified grounds. If the state auditor accepts an application, it is sent to the state agency that has jurisdiction over the rule or law at issue. The state agency has 60 days to object to the requested waiver. If objection is made, the state auditor is to conduct an informal hearing to determine whether to grant the request.

Section 6 of *Article 2* sets restrictions on what information government can post on its websites. Agencies in the executive, legislative and judicial branches were covered effective July 1, 2005. The section is effective for political subdivisions on July 1, 2006.

Section 38 requires most political subdivisions to develop a policy that controls out-of-state travel by elected officials. The policy must be approved by a recorded vote and be available for public inspection.

Section 39 requires cities and counties with a population of more than 15,000 to annually notify residents of the base salaries of the three highest-paid employees and their positions. Acceptable publication methods are provided.

Article 6, section 17 amends section 201.091 to allow a voter to request that the voter's name be withheld from public information to protect the safety of the voter or the voter's family.

Chapter 159, *Article 1*, contains changes to section 626.556 that distinguish between a "family assessment" (report does not allege substantial child endangerment) and an "investigation" (substantial child endangerment alleged). Section 3 adds probation and correctional services officers to the list of mandated reporters.

Chapter 167 requires that any person or business that conducts business in Minnesota and uses "personal information" (defined term) provide notice if there is a breach of the security of that personal information. The provisions are to be coded in section 325E.61 and must set out how notice is to be provided and how it is to be coordinated with a law enforcement investigation. Subdivision 5 requires *government entities* to conduct a comprehensive security assessment of "personal information" but does not provide standards for or for the filing of a report documenting the assessment. The language is effective January 1, 2006.



**Information Policy
Analysis Division**

Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email info.ipad@state.mn.us.

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This document can be made available in alternative formats, such as large print, Braille or audiotope by calling 651.296.6733.

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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The Commissioner of Administration has discussed issues relating to copy fees in numerous advisory opinions issued pursuant to section 13.072. These opinions are identified in the subject category, 'Copy costs,' in the topical index of advisory opinions at: www.ipad.state.mn.us/docs/opindex.doc. The 2005 amendments to section 13.03 should be kept in mind when reviewing opinions issued prior to August 1, 2005.



Opinion Highlights

The following are highlights of recent advisory opinions by the Commissioner of Administration. All Commissioner's opinions are available on the IPAD web site at www.ipad.state.mn.us.

05-024: An individual asked whether Resource and Training Solutions (RTS), a government entity, had complied with Minnesota Statutes, Chapter 13, in denying access to the operating agreement between RTS and Blue Cross Blue Shield of Minnesota (BCBSM). RTS denied access based on the trade secret provision in section 13.37, relying upon a determination by BCBSM. Shortly after the opinion was requested, BCBSM reversed its position and RTS released the document. The Commissioner noted that RTS bears responsibility for determining whether or not to release government data. The Commissioner opined that RTS had not complied with Chapter 13 in denying access to the operating agreement.

05-026: Independent School District 2154, Eveleth-Gilbert, inquired about the classification of data it maintains pursuant to Minnesota Statutes, section 120A.24 (relating to home-schooled children). The Commissioner opined that pursuant to section 13.32, subdivision 4a, any data the District collects and maintains about home-schooled children and their parents are private.

05-028: The Nicollet County Attorney's office asked about the classification of the following data: psychiatric records and data relating to psychiatric records about an alleged perpetrator gathered from a regional treatment center by a local police department as part of a criminal investigation. The Commissioner opined that because the criminal investigation is active, section 13.82 classifies the data as confidential. However, the data may be released to the alleged victim pursuant to section 13.82, subdivision 7.

Resources Available for Records Management Assistance

The Department of Administration's records management program was discontinued in 2002; however, the following resources are available to government entities seeking a copy of a general records retention schedule or additional assistance.

Copies of the *Preserving and Disposing of Government Records* booklet can be obtained from IPAD or one of associations listed below. The booklet also may be downloaded from the IPAD website.

Cities: City general records retention schedules may be obtained online at www.mcfoa.org/Forms.htm or by contacting the League of Minnesota Cities (LMC), 651-281-1200. Questions should be directed to the city's records manager, legal counsel or LMC.

Counties: Counties should contact the Association of Minnesota Counties (AMC), 651-224-3344 for copies of the 1985 general schedule. Questions should be directed to the county's records manager, legal counsel or AMC.

School Districts: School District general records retention schedules are available at www.region1.k12.mn.us/main.htm. Questions should be directed to the district's records manager or legal counsel.

Townships: Townships should call the Minnesota Association of Townships, 763-497-2330, for copies of the general schedule. Questions should be directed to the township's records manager, legal counsel or the Association.

State Agencies: While IPAD has copies of the 1990 General Records Retention Schedule for State Agencies, state agency personnel should contact their agency's records manager for copies of their complete records retention schedules. Questions should be directed to the agency's records manager or legal counsel.

Copies of retention schedule forms also are available at the Minnesota Historical Society's website, www.mnhs.org/preserve/records/retentionsched.html.

In addition, assistance is available from a group of state and local government records managers who have banded together as MNGRIN. This group meets monthly in St. Paul and maintains a listserv. See www.mnhs.org/preserve/records/mngrin.html for more information.

